JUN 24 1976

In The

SUPREME COURT OF THE UNITED STATES

No. 75-1859

DEAN TAYLOR,

Petitioner,

vs.

LIBERAL MARKET, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Petitioner, Dean Taylor, prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Sixth Circuit rendered in these proceedings on February 24, 1976.

OPINIONS BELOW

The opinion of the Court of Appeals, as yet unreported, appears at Appendix A, infra, pp. 1a-2a. The opinion of the United States District Court for the Southern District of Ohio, Western Division at Dayton, is unreported, and appears at Appendix B, infra, pp. 3a-9a.

JURISDICTION

The order or judgment of the United States District Court of Appeals for the Sixth Circuit was entered on February 24, 1976. See Appendix A, pp. 1a-2a. A petition for rehearing was filed with the United States Court of Appeals on March 9, 1976. See Appendix C, pp. 10a-13a. On April 6, 1976 the United States Court of Appeals entered its order denying the petition for rehearing. See Appendix D, p. 14a. This petition for certiorari was filed less than 90 days from the date of the order, denying the petition for rehearing. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

The Petitioner, Dean Taylor, brought this action seeking declaratory relief that the wage and price controls under the Economic Stabilization Act of 1970 were no longer binding upon the parties and that it is legal to now pay lost wage increases. The questions thereby arising are:

1. Whether the action of the Court of Appeals for the Sixth Circuit in affirming the lower court judgment holding that a contract granting a wage increase in excess of the wage controls of the Economic Stabilization Act may not be enforced after the expiration of the act is consistent with the case of *U. S.* v. *California*, 504 F.2d 750 (1974), cert. denied, 43 L.W. 3643 (1975).

2. Whether Article XV of the collective bargaining agreement between the parties which provides for the payment at such time as it is legal to do so of wage increases lost during the period of wage and price controls is enforceable.

STATEMENT OF FACTS

The facts relevant to the questions presented by this petition are uncontroverted and therefore may be introduced to the Court in a summary fashion.

The petitioner, Dean Taylor, is and has been at all relevant times an employee of The Liberal Market, Inc. Teamster Local 957 is the bargaining representative for Liberal's warehouse employees. Mr. Taylor has been and is a member of said bargaining unit and Local 957.

The Liberal Market, Inc. is a firm in the retail food industry with its offices and principal place of business in Dayton, Ohio.

PRE-LITIGATION FACTS

During the summer of 1972, Liberal and Local 957 negotiated a new collective bargaining agreement. During the course of these negotiations, Local 957 proposed an increase in straight time hourly wages of thirty-five cents per hour for each of three years. This proposal by Local 957 was incorporated in the final agreement to be effective for a three year period ending August 1, 1975. The new agreement was executed on August 5, 1972 but was effective by its terms as of August 1, 1972. It provided for several increases in wage and fringe benefits to be effective during the first contract year among them an increase in straight time hourly wage rate of thirty-five cent raise was provided for each of the two succeeding years.

The agreement was executed during the period of Phase II of Economic Controls. During Phase II, bargaining units were generally limited to annual increases in wages and fringe benefits equal to 5.5 percent. Amounts in excess of that limit could be paid only if prior approvals

(called "exceptions") were obtained from the Pay Board or one of the District Directors of the Internal Revenue Service. It was understood by the parties to the agreement that an exception request would be necessary. It was also realized, however, that an application for an exception might be denied. Accordingly, a savings clause was included in the bargaining agreement by which the company in effect agreed that if any part of the wage increases could not be paid at the time they were due, they would be paid at such time as permitted by law.

That provision of the contract is as follows:

ARTICLE XV

SAVING CLAUSE—RE WAGE FREEZE

> If any proposal submitted by the Union, if granted, may not be put into effect because of applicable legislation, Executive Orders or Regulations dealing with Wage and Price Stabilization, then such proposals or any part thereof, including any retroactive requirement thereof, shall become effective at such time, in such amounts, and for such periods, retroactively and prospectively, as will be permitted by law at any time during the life of this agreement and any extension thereof.

Because of the wage and price limitations in effect at the time the agreement was entered into, Liberal was limited to paying the equivalent of eighteen cents per hour of the bargain for thirty-five cents per hour increase. It applied for an exception on August 21, 1972, so as to be able to pay the remaining seventeen cents per hour but this request was denied on September 6, 1972, by Director Schuster and the seventeen cents per hour was not paid. An exception request filed later for the following year was

granted and the bargained for wage increase for that year was paid. However, the seventeen cents per hour increase lost in the first year on the contract was still not paid.

By letter dated April 26, 1974, Gary L. Legg, President of Local 957, stated that he understood that controls dropped on April 30, 1974, and requested that Liberal implement the seventeen cent increase which had been put into effect during the wage control period and to make payment of such amount. Liberal increased wages by the seventeen cents per hour effective May 1, 1974, with respect work performed on or after such date, but refused to pay the seventeen cents per hour for the period August 1, 1972, through August 30, 1974.

LITIGATION FACTS

On August 22, 1974, Mr. Taylor, individually and as a representative of the class consisting of the members of Local 957, instituted an action seeking declaratory relief that the wage controls under the Economic Stabilization Act of 1970 were no longer binding upon the parties and that it was legal to now pay the lost increases.

On January 2, 1975, Liberal moved the United States District Court for the Southern District of Ohio, Western Division pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment. On January 27, 1975, Mr. Taylor filed a similar motion for summary judgment.

On May 14, 1975, the Honorable Carl B. Rubin sustained Liberal's motion for summary judgment and overruled Taylor's motion. This opinion appears at Appendix B, infra, pp. 3a-9a.

On June 12, 1975, Taylor filed a Notice of Appeal with the District Court, and the appeal was docketed in the

United States Court of Appeals for the Sixth Circuit on July 21, 1975.

On February 24, 1976, the Court of Appeals entered its decision which affirmed the lower court's judgment. Said decision was entered without opinion.

REASONS FOR GRANTING THE WRIT

1. The case presents an issue of great public importance.

It is of widespread public importance that the Court consider the issues here presented so that the lower courts and employers and employees may be guided authoritatively with respect to the payment of wages lost during the period of wage and price freezes.

During the control period of the Economic Stabilization Act of 1970, thousands of collective bargaining agreements were entered into by employers and their employees or representatives, most of which contain a provision similar to Article XV of the agreement in this case. Most of these contracts also provided for wage and benefit increases above the limitations imposed by the Pay Board or the Cost of Living Council. As a result many employees received only a portion of the wage increase agreed upon by the employers or representatives. As of yet there has been no definitive ruling as to whether a union or an employee can recoup wages lost during the economic control period. We are speaking of thousands of employees and employers across our nation who are without guidance as to their respective rights and obligations. In the present case alone we are dealing with over one hundred employees and thousands of dollars.

2. The decision below conflicts with the law and decisions of courts in other jurisdictions.

In the present case, The District Court held that the parties remained liable under the Economic Stabilization Act after its expiration by the operation of the general savings statute, 1 U.S.C. § 109. We can only surmise that the Court of Appeals agreed with this finding in as much as no opinion was filed with its decision.

The authority to enforce or issue orders under the Act expired on April 30, 1974, except as saved by Section 218 of the Act or by the general savings statute § 109.

Section 218 of the Economic Stabilization Act provides:

> The authority to issue and enforce orders and regulations under this title expires at midnight April 30, 1974, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to May 1, 1974.

This Court in the Case of *Allen* v. *Grand Central Aircraft Co.*, 347 U.S. 535 at 554-555, 74 S. Ct. 745 at 756, stated that the "object of the general savings statute is to prevent the expiration of a temporary statute from cutting off appropriate measures to enforce the expired statute in relation to violations of it, or of regulations issued under it, occurring before its expiration."

The issue involved herein is whether or not any act was committed prior to May 1, 1974, upon which any enforcement proceeding could be brought. Clearly from the facts there is none.

The argument was raised below that the denial of the request for an exception to the wage controls is still binding upon the parties and payment now would be a violation of said order. It was also contended that an action could be brought by the government against the employer

within the exception of Section 218, in that the work for which the payment is to be made was performed prior to the expiration of the Economic Stabilization Act. It was further argued that the inclusion of Article XV in the collective bargaining agreement, and the request for exception constitute acts in violation of the wage and price controls.

These arguments and the decision of the Court in this case are contrary to the decision in the case of *U.S.* v. *California*, 504 F.2d 750 (T.E.C.A. 1974), cert. denied, 43 L.W. 3643 (1975).

The California case involved wage increases for work performed during the period that controls were in effect. The Cost of Living Council (CLC) challenged the amount of the increases and issued an order disallowing a portion of said increases. The State of California, the employer, complied with this order. However, upon the expiration of the Act it acted to retroactively pay the increases disallowed by the CLC. The government then filed suit to enjoin said payments. The Temporary Emergency Court of Appeals held that the CLC orders could not be enforced after the expiration date of the Act to preclude wage payments in excess of such orders, even to work performed during the control period, so long as the actual payments were not made prior to the expiration date of the Act.

In the California case, the government argued that there were several acts committed prior to the expiration date upon which an action could be brought, namely that the State Budget Act was passed by the California Legislature during the control period, that the state filed a request for review of the CLC order, and that the State threatened to implement said increases after the CLC order. The Court held that none of those were sufficient to constitute

an act under Section 218. The Court ruled that only the payment of wages in violation of the CLC order during the Control period could constitute an "act" within the meaning of that word as used in Section 218.

Applying the California decision to the instant case reveals that no act was committed prior to May 1, 1974, within the meaning of Section 218 of the Act and therefore the Economic Stabilization Act no longer restrains the payment of the lost wage increases.

The present case is clearly distinguishable from the case of *U. S.* v. *International Brotherhood of Electrical Workers, Local 11,* 475 F.2d 1204 (T.E.C.A. 1973). In the *I.B.E.W.* case, after an agreed wage increase was disallowed the employers and employees entered into escrow agreements under which the disallowed amounts were placed in escrow to be released "at such time as they may legally do so." The representative of the employees sought reconsideration of the denial of the exception request. Said decision was affirmed and the parties were specifically notified that the escrow accounts were in violation of the Act.

The *I.B.E.W.* case involved the actual payment of money during the control period, The Court held these payments into the escrow account to be in reality payments to the employees. It should be noted that the escrow agreements were entered into after the disapproval of the wage increase and that on reconsideration the escrow agreements were specified as being in violation of the Act. Here the intent of the Act was being frustrated and orders of the Pay Board were being clearly violated. In the present case there has been no payment of the disputed wages to the employee within the effective period of the Economic Stabilization Act.

In summary, there were no acts committed prior to May 1, 1974 which qualify as a violation so as to cause the application of the general savings statute supra, or Section 218 of the Act.

The clear intent of the wage control program was to prevent excess dollars from entering the economy and fueling inflationary pressures during a particular period of time. The Act merely authorized the President to issue regulations limiting prices and wages paid during the effectice period of the Act.

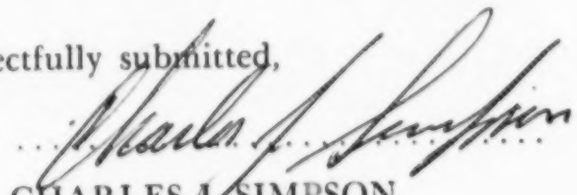
No where in the Act is the President or any of his delegates authorized to declare any wage agreement illegal nor is there any provision in the Act declaring any type of contract or contract provision illegal. The Act merely authorized the President to suspend or permit the payment of wages during the effective period of the Act.

The ruling of the Court of Appeals appears to conflict with the decision in the California case cited supra. We believe that there will be decisions in other jurisdictions which may agree or conflict with the California case or the decision in this case. We believe it is of great public importance and of great importance to the many employers and employees in similar circumstances that this Court review this case and issue a definitive decision on the merits of the arguments.

CONCLUSION

For these reasons a Writ of Certiorari should issue to review the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,



CHARLES J. SIMPSON

Suite 300 Dayco Building
333 West First Street
Dayton, Ohio 45402

Counsel for Petitioner

AFFIDAVIT OF SERVICE

STATE OF OHIO)
) SS.
COUNTY OF MONTGOMERY)

Charles J. Simpson first being duly cautioned and sworn according to law says that he is the attorney for the Petitioner herein and that three copies of the foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit was served upon R. Joseph Parker, Attorney for Respondent, 600 Dixie Terminal Building, Cincinnati, Ohio 45202 on the 21st. day of June, 1976 by United States Mail, first class postage prepaid.

Charles J. Simpson

CHARLES J. SIMPSON

Sworn to and subscribed in my presence by the said Charles J. Simpson on this 21st day of June, 1976.

Kathleen Meehan

Notary Public

KATHLEEN MEEHAN, Notary Public
In and for Montgomery County, Ohio
My Commission Expires March 30, 1981

APPENDIX A

No. 75-1864

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DEAN TAYLOR,
Plaintiff-Appellant,

vs.

LIBERAL MARKET, INC.,
Defendant-Appellee.

ORDER

(Filed February 24, 1976)

Before: PECK, McCREE and LIVELY, Circuit Judges.

Plaintiff-appellant Dean Taylor, has appealed from summary judgment entered in the district court in favor of Liberal Market, Inc., his employer, in an action for retroactive payment of wage increases provided in a collective bargaining agreement but exceeding the 5.5 percent limitation of wage adjustments under the Economic Stabilization Act of 1970. Upon consideration of the entire record, and noting that a previous panel of this court, by order dated November 3, 1975, found it to have jurisdiction, the court concludes that the defendant-appellee was entitled to summary judgment.

The judgment of the district court is affirmed.

Judge McCree would dismiss the appeal for lack of jurisdiction on the ground that exclusive power to review this case is vested in the Temporary Emergency Court of Appeals.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Civil No. C3-74-146

DEAN TAYLOR,
Plaintiff,

vs.

LIBERAL MARKET, INC.,
Defendant,

and

UNITED STATES OF AMERICA,
Intervenor-Defendant.

**FINDINGS OF FACT,
OPINION AND
CONCLUSIONS OF LAW**

(Filed May 14, 1976)

This matter is before the Court for disposition by agreement upon the plaintiff's and defendant's cross-motions for summary judgment pursuant to Rule 56, Fed. R. Civ. P., and for the certification of this matter as a class action pursuant to Rule 23, Fed. R. Civ. P.

Plaintiff seeks a declaratory judgment that the wage and price controls under the Economic Stabilization Act of 1970 are no longer binding upon wages claimed due to the plaintiff and those similarly situated.

Plaintiff asserts also that the defendant is obligated Article XV of the collective bargaining agreement to pay those wage increases which were lost because of such wage and price controls. The determination of this motion will be made in accordance with Rule 52 of the Federal Rules of Civil Procedure, and the Court does submit herewith its findings of fact and conclusions of law.

I

FINDINGS OF FACT

1. Plaintiff Dean Taylor is, and has at all relevant times been, an employee of defendant The Liberal Market, Inc. ("Liberal"). Teamsters Local 957 is the bargaining representative for Liberal's warehouse employees classified as Freezermen, Drivers, Lead Men, Lift Operators, Warehousemen or Warehouse Porters (the "warehousemen"). Mr. Taylor is, and has at all relevant times been, a member of that bargaining unit and a member of Local 957.

2. Defendant Liberal operates in the retail food industry with offices and principal place of business in Dayton, Ohio. Liberal purchases raw agricultural products, dry grocery products and canned goods from suppliers located in at least thirty-five different states, stores these and other products in its warehouse, and transports such products to its retail supermarkets located in Ohio and Kentucky for resale to consumers.

3. During the course of contract negotiations, Local 957 proposed an increase in straight time hourly wages

of thirty-five cents per year for each of three years. This proposal by Local 957 was incorporated in the final agreement which became the collective bargaining agreement (the "Agreement") effective for a three year period ending August 1, 1975. (Exhibit 1). The new collective bargaining agreement was actually executed August 5, 1972, but was effective as of August 1, 1972, by its terms. It provided for several increases in wages and fringe benefits during the first contract year (August 1, 1972 – July 31, 1973). Among such increases a straight time hourly wage rate of thirty-five cents. A similar thirty-five cent raise was provided for each of the two succeeding contract years (August 1, 1973 – July 31, 1974 and August 1, 1974 – July 31, 1975).

4. The Agreement was executed during the period of Phase II of economic controls. During Phase II, bargaining units were generally limited to annual increases in wages and fringe benefits equal to 5.5%; amounts in excess of that limit could be paid only if prior approvals (Called "exceptions") were obtained from the Pay Board or from one of the District Directors of the Internal Revenue Service to whom the Pay Board had delegated the responsibility to initially consider and rule upon such exception requests.

5. The aggregate value of the wage and fringe benefit improvements scheduled under the Agreement to be implemented during the first contract year exceeded the 5.5% limit by seventeen cents per hour, and in the absence of an exception, Liberal was limited to an increase of only eighteen cents per hour of the thirty-five cents per hour increase provided as of August 1, 1972, under the Agreement. This was reflected in a letter of understanding, also dated August 5, 1972. (Exhibit 2).

6. On August 21, 1972, Liberal's Director of Personnel submitted an exception request (Exhibit 3) on behalf of Liberal, Local 957 and the warehousemen to District Director Paul A. Schuster requesting permission to implement the additional seventeen cent increase in straight time wages scheduled under the Agreement to become effective as of August 1, 1972. On September 6, 1972, District Director Schuster denied that request. (Exhibit 4). Neither Liberal nor Local 957 nor any of the warehousemen filed an appeal from this decision.

7. Because of the 5.5% limit, on August 1, 1973, Liberal was able to implement only twenty-seven cents of the thirty-five cent increase scheduled for the second contract year. On August 31, 1973, Peter J. Rakay, Esq., attorney for Local 957, wrote to Peter A. Tchirkow of the Cost of Living Council requesting an exception for Liberal to pay the additional eight cents per hour. (Exhibit 5).

8. On March 6, 1974, the Cost of Living Council issued a "Decision and Order" authorizing Liberal to pay the additional eight cents (8¢) per hour for the second contract year. (Exhibit 6). Payments were made retroactively to August 1, 1973. The warehousemen thereby received the entire thirty-five cent per hour increases provided for the second contract year.

9. Article XV of the Agreement provides:

> If any proposal submitted by the Union, if granted, may not be put into effect because of applicable legislation, Executive Orders or Regulations dealing with Wage and Price Stabilization, then such proposals, or any part thereof, including any retroactive requirement thereof, shall become effective at such times, in such amounts, and for such periods, retroactively and prospectively, as will be permitted by

> law at any time during the life of this Agreement and any extension thereof.

On April 26, 1974 (Exhibit 7), Gary L. Legg, President of Local 957, requested that Liberal pay retroactively the seventeen cent increase referred to in Finding 6. Liberal increased wages by the seventeen cents per hour effective May 1, 1974, with respect to work performed on or after such date, but refused to retroactively pay seventeen cents per hour for the period August 1, 1972, through April 30, 1974.

10. The prerequisites to a class action specified in Rule 23 (a) are all present in this case.

a. Since there are in excess of 100 members of the class, Joinder is impracticable;

b. The questions of law and fact are common to every member of the class since the determination of a collective bargaining agreement will affect all members of the class equally;

c. Plaintiff who is covered by the collective bargaining agreement has a claim;

d. Plaintiff was a member of Local 957 and was employed by Liberal at its warehouse in Dayton during the entire period of August 1, 1972, through April 30, 1974. There is no reason to believe that plaintiff's representation will be less than adequate;

e. In addition to satisfying the prerequisites of Rule 23 (a), the action also meets the requirements of Rule 23 (b) (1). Adjudication of this matter in this Court would dispose of similar claims by all other members of the class.

II

OPINION

At issue herein is the validity of a contract which in part contravenes an act of Congress. The law is clear that a contract in violation of a statute is unenforceable. *Massillon Savings & Loan Co.* v. *Imperial Finance Co.,* 114 Ohio St. 523. Where contractual consideration is partly legal and partly illegal a Court will enforce the agreement to the extent it conforms to the law. *Frederica* v. *Murray,* 45 Ohio Ops. 473.

An agreement legally valid at the time of execution may become void if while still executory it contravenes a subsequently enacted statute, *Massillon Savings & Loan Co.* v. *Imperial Finance Co., supra.*

The liability of parties under the Economic Stabilization Act remains after the expiration thereof. The General Savings Statute, 1 U.S.C. ¶109, prevents such expiration from acting as a legislative pardon for liability imposed by statute and regulation issued thereunder, *Fleming* v. *Mohawk Co.,* 331 U.S. 111, 119 (1947); *Great Northern Railway Co.* v. *United States,* 208 U.S. 453, 465 (1908).

The Economic Stabilization Act cannot be evaded by a promise to pay *in futuro.* Where, as here, the Decision and Order of the Cost of Living Council denies a wage increase, no device or scheme may be employed to evade such order. *United States* v. *International Brotherhood of Electrical Workers,* 475 F.2d 1204 (T.E.C.A. 1973).

III

CONCLUSIONS OF LAW

A. This Court has jurisdiction of this matter under the Economic Stabilization Act of 1970 §§ 210 and 211.

B. This matter is properly brought as a class action in accordance with Rule 23 of the Federal Rules of Civil Procedure.

C. A contract granting a wage increase violative in part of the wage controls of the Economic Stabilization Act of 1970 may not be enforced after the expiration of such act as to such violative portion.

D. The motion for summary judgment of plaintiff should be DENIED; the motion for summary judgment of defendant should be GRANTED.

LET JUDGMENT ISSUE IN ACCORDANCE WITH THE FOREGOING.

/s/ CARL B. RUBIN
United States District Judge

APPENDIX C

No. 75-1864

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DEAN TAYLOR,
Plaintiff-Appellant,

vs.

LIBERAL MARKET, INC.,
Defendant-Appellee.

**Appeal From The United States District Court
For The Southern District of Ohio,
Western Division**

**PETITION FOR REHEARING WITH
SUGGESTION FOR REHEARING EN BANC**

(Received March 9, 1976)

SIMPSON & LACHEY
Charles J. Simpson
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Attorney for Plaintiff-Appellant

The Plaintiff-Appellant respectfully petitions the Court for a rehearing of the Court's decision of February 24,

1976, which affirmed the District Court's ruling that Defendant-Appellee was entitled to a summary judgment. The Plaintiff-Appellant further suggests to the Court that consideration by the full Court is necessary for the reason that this appeal involves a question of exceptional importance, to-wit, There are hundreds of collective bargaining agreements throughout the country similar to the one in question in the present case in which thousands of employers and employees are without guidance as to their rights and obligations in regard to wages lost during the wage control period.

It is difficult to ascertain what reasons the Court employed in affirming the lower Court's decision since this Court's decision is devoid of any discussion or reasoning of the issues. Plaintiff-Appellant is left to speculate as to the grounds upon which the Court based its decision.

This Court's decision was possibly based upon a finding that either the retroactive pay provisions in the collective bargaining agreement is illegal or that the payment now of such wages would constitute a violation of the Economic Stabilization Act. Appellant contends that neither of these grounds are correct statements and that the Court erred by affirming the lower Court's decision.

ARGUMENT

I. THE RETROACTIVE PAYMENT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT ARE LEGAL AND ENFORCEABLE.

No where in the Economic Stabilization Act of 1970, 12 U.S.C.A. § 1904 note, is there a provision authorizing the President or any of his delegates to declare any wage agree-

ment illegal. There is no provision in the Act which can be construed to have any effect on an agreement by parties to do something at a time when the Act has no binding force or effect. The act merely authorized the suspension of the payment of wages during the effective period of the Act.

The present action was not filed until after the expiration of the Act and is not based on any act which occurred during the effective period of the act. It is based on Defendant-Appellee's refusal after the end of the wage freeze, wages which it had agreed to pay. Plaintiff-Appellant seeks only a declaratory judgment that the retroactive payment of wages now is not illegal.

II. PAYMENT AND RECEIPT OF WAGES RETROACTIVELY DOES NOT CONSTITUTE A VIOLATION OF THE ECONOMIC STABILIZATION ACT.

The payment now of wages lost during the wage and price control period would not be a violation of the Economic Stabilization Act, supra.

The Act expired by its terms on April 30, 1974 and thus the payment now could not be a violation of the Act. In the case of *United States* v. *California,* 504 F. 2d 750, (T.E.C.A. 1974), cert. denied, 43 U.S.L.W. 3643 (June 10, 1975), the Temporary Emergency Court of Appeals held that the payment after the expiration date of the act of wages lost during the wage control period is not a violation of the Act and that the government could prosecute the employer for making such retrocative payments.

CONCLUSION

For the foregoing reason Appellate requests an opportunity for a rehearing on these points. Because of the important nature of the question presented, it is requested that the rehearing be before the entire Court, sitting en banc.

Respectfully submitted,

/s/ CHARLES J. SIMPSON
Attorney for Plaintiff-Appellant

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Petition for Rehearing and Suggestion for Rehearing en Banc was served upon R. Joseph Parker, 600 Dixie Terminal Building, Cincinnati, Ohio 45202 on this 9th day of March, 1976.

/s/ CHARLES J. SIMPSON

APPENDIX D

No. 75-1864

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DEAN TAYLOR,
Plaintiff-Appellant,

vs.

LIBERAL MARKET, INC.,
Defendant-Appellee.

ORDER

(Filed April 6, 1976)

BEFORE: PECK, McCREE and LIVELY, Circuit Judges.

No judge in regular active service of the court having requested a rehearing en banc, the petition for rehearing in this case has been submitted to the panel which heard the appeal.

Upon consideration of the petition for rehearing the court concludes that a rehearing is not required. It is therefore ORDERED that the petition for rehearing be and it hereby is denied.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk